

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEVON DOCKERY,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	NO. 04-6025
	:	
DAVID DIGUGLIELMO, et al.,	:	
Respondents.	:	

MEMORANDUM AND ORDER

Magistrate Judge David R. Strawbridge's Report and Recommendation recommended staying the proceedings pending a response by the Pennsylvania Supreme Court to the question certified by the Third Circuit Court of Appeals in Kendrick v. District Attorney of Philadelphia, et al., No. 02-3158 (3rd Cir.).

That decision has now been handed down (*See* Kendrick v. District Attorney of Philadelphia County, 2007 PA LEXIS 361 (PA Feb. 20, 2007)).

The Respondent in its brief filed March 12, 2007 (Docket No. 35) stated that it "will no longer contest Petitioner's claim that the trial court erred in accepting his guilty plea to a violation of Pennsylvania's Corrupt Organization Act, 18 Pa. C.S. § 911" (*see* first page of Docket No. 35).

The only remaining question, according to both Petitioner and Respondent, is the appropriate remedy.

Respondent believes that a conditional writ should be issued giving the trial court "the chance to reconsider the matter" presumptively to "preserve its original sentencing scheme."

The position of Respondent overlooks the obvious error, according to the Pennsylvania Supreme Court, in accepting Petitioner's plea to the violation aforesaid.

The remedy is reflected in the following order:

AND NOW, this 4th day of April, 2007, it is hereby **ORDERED** that the petition for writ of habeas corpus is **GRANTED**, and the sentence imposed on Petitioner for violation of the Pennsylvania Corrupt Organization Act is **VACATED**.

BY THE COURT:

s/ Ronald L. Buckwalter, S. J.
RONALD L. BUCKWALTER, S.J.